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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

TONY MCCLENDON,

Defendant and Appellant.

B291608

(Los Angeles County
Super. Ct. No. VA144278)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Yvonne T. Sanchez, Judge. Affirmed.

Lynda A. Romero, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Tony McClendon pled no contest to one count of possessing a forged driver's license and was sentenced to the upper term of three years. He appealed. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and conclude that no arguable issues exist. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At a preliminary hearing held October 10, 2017, Los Angeles County Sheriff's deputy Scott Smith testified that he was assigned to the "parolee at large apprehension team." In connection with that assignment, Smith searched defendant and defendant's home in March 2017. He found "[n]umerous forged checks, counterfeit checks, [and a] fraudulent identification card." The identification card contained defendant's photograph but victim Charles H.'s identifying information.

On October 24, 2017, the Los Angeles County District Attorney filed an information charging defendant with one count of possessing a forged driver's license (Pen. Code, § 470b),¹ one count of identity theft (§ 530.5, subd. (a)), and one count of theft of identifying information (§ 530.5, subd. (c)(1)). The information also alleged that defendant suffered one prior strike conviction (§§ 667, subds. (b)-(j), 1170.12) and five prison priors (§ 667, subd. (b)).

On June 15, 2018, defendant pled no contest to possession of a forged driver's license. Pursuant to the plea agreement, the remaining charges were dismissed, defendant's strike was stricken, and the trial court sentenced him to the upper term of three years. The court awarded defendant a total of 469 days of

¹All further statutory references are to the Penal Code unless otherwise indicated.

custody credits. It imposed a \$300 restitution fine (§ 1202.4), a \$40 court operations assessment (§ 1465.8), and a \$30 conviction assessment (Gov. Code, § 70373), and imposed and suspended a \$300 parole revocation fine (§ 1202.45).

Defendant timely filed a notice of appeal on July 27, 2018. He did not seek or receive a certificate of probable cause.

Defendant's appointed appellate counsel filed a *Wende* brief raising no issues and asking this court for an independent review of the record on January 4, 2019. We sent defendant a letter on January 7, 2019 informing him of the nature of the brief that had been filed and advising him that he had 30 days to file a supplemental brief setting forth any issues he wished us to consider. Defendant did not file a supplemental brief.

On January 8, 2019, Division Seven of the Second District Court of Appeal issued *People v. Dueñas* (2019) 30 Cal.App.5th 1157, which held that the trial court must consider a defendant's ability to pay before imposing a restitution fine or court operations and conviction assessments. On or about January 22, 2019, defendant's appellate counsel filed in the trial court a "Motion to Vacate Fines and Restitution Fines" in light of *Dueñas*. In this court, she filed a "Motion to Stay the *Wende* Treatment of this Case" pending the trial court's consideration of the motion to vacate. We granted the motion to stay on February 11, 2019.

On March 11, 2019, appellate counsel filed a letter and minute order notifying this court that the trial court heard defendant's motion to vacate on February 19, 2019, found that he lacked the ability to pay the fines and fees, and stayed the execution of the fines and fees. Counsel requested that we vacate the stay and reinstate *Wende* treatment.

DISCUSSION

We have independently reviewed the entire record. We are satisfied that no arguable issues exist and defendant has received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal. 4th 106, 123-124; *Wende, supra*, 25 Cal.3d at p. 443.)

DISPOSITION

The judgment of the trial court is affirmed.

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COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.